

RESOLUTION NO. 1449

A RESOLUTION AUTHORIZING A COOPERATIVE IMPROVEMENT AGREEMENT BETWEEN THE CITY OF CENTRAL POINT AND THE OREGON DEPARTMENT OF TRANSPORTATION TO CONSTRUCT I-5: EXIT 33 OFF-RAMP IMPROVEMENTS

WHEREAS, the City amended its Transportation System Plan (TSP) in 2015 to incorporate the Interchange Area Management Plan (IAMP) for I-5, Exit 33; and

WHEREAS, said amendment identified the I-5 and East Pine Street Northbound Ramp Terminal as a transportation project; and

WHEREAS, the City approved a Conditional Use Permit for a Costco Membership Warehouse in March 2016, the traffic from which will trigger the need for dual right turn lanes at the Northbound Ramp Terminal; and

WHEREAS, as a condition of the Costco Membership Warehouse approval, the applicant is required to pay their proportional share to the City who is facilitating the cost share distribution to the state ; and

WHEREAS, the City Council of the City of Central Point deems that the necessity, convenience and the general welfare of the public will benefit by this agreement;

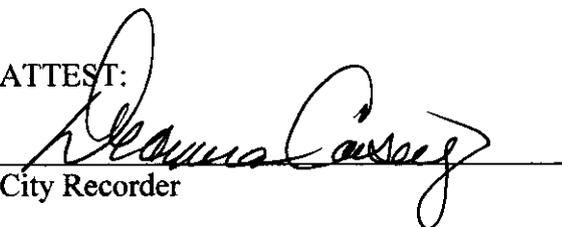
NOW, THEREFORE, THE CITY OF CENTRAL POINT RESOLVES AS FOLLOWS, to enter into an agreement with the Oregon Department of Transportation (ODOT) in the manner stated in said agreement which is Exhibit "A".

BE IT FURTHER RESOLVED that the City Council directs the City Manager to consummate the agreement (Exhibit "A") following the adoption of this resolution.

PASSED by the City Council and signed by me in authentication of its passage this 24th day of March, 2016.


Mayor Hank Williams

ATTEST:


City Recorder

**COOPERATIVE IMPROVEMENT AGREEMENT
I-5: Exit 33 Off-Ramp Improvements**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the City of Central Point, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Interstate 5 (Pacific Highway No. 1, I-5) Exit 33, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree State shall design and construct improvements to I-5, Exit 33, hereinafter referred to as "Project". The Project includes a dual right-turn lane at the I-5, Exit 33 northbound off-ramp. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$1,300,000 in federal, state and agency funds. The estimate for the total Project cost is subject to change. State shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance

responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$500,000 for the Project. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to Preliminary Engineering, purchase of right of way, or approximately 4-6 weeks prior to Project bid opening.
2. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
3. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
4. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
5. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

6. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
7. Agency's Project Manager for this Project is Chris Clayton, City Manager, City of Central Point, 140 South 3rd Street, Central point, OR 975002, 541-423-1018, Chris.Clayton@centralointoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
2. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$500,000 for payment of the Project.
3. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
4. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on I-5, Exit 33.
5. State's Project Manager for this Project is Richard Randleman, Project Manager, 100 Antelope Road, White City, OR 97503, 541-864-8828, Richard.randleman@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.

Agency/State
Agreement No. 31190

2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant

equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Agency/State
Agreement No. 31190

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

CITY OF CENTRAL POINT, by and through
elected officials

By

Date

By

Date

APPROVED AS TO LEGAL SUFFICIENCY

By
Counsel

Date

Agency Contact:

Chris Clayton
City Manager
140 South 3rd Street
Central Point, OR 97502
541-423-1018
Chris.Clayton@centralpointoregon.gov

State Contact:

Art Anderson
District 8 Area Manager
100 Antelope Road
White City, OR 97503
541-774-6383
Arthur.h.anderson@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By
Highway Division Administrator

Date

APPROVAL RECOMMENDED

By
Region 3 Manager

Date

By
District 8 Area Manager

Date

**APPROVED AS TO LEGAL
SUFFICIENCY**

By
Assistant Attorney General

Date

EXHIBIT A – Project Location Map

